

FISCAL NOTE

HB 3026 - SB 3018

February 11, 2002

SUMMARY OF BILL:

- Creates the Tennessee Lottery for the Support of Education Act of 2002.
- Requires the net proceeds of lottery games be used to support improvements and enhancements for educational purposes and programs and that such net proceeds shall be used to supplement, not supplant existing resources for educational purposes and programs.
- The provisions of the bill would become effective on December 1, 2002, only if the proposed amendment to Article XI, Section 5 of the Constitution of Tennessee is properly approved at the November General Election in 2002.
- Creates the Tennessee Lottery Corporation, which is separate from state government and is set up as a corporate and public body. Requires the corporation to be located in Davidson County.
- The Tennessee Lottery Corporation Board of Directors:

Composition

- 2 Members appointed by the Governor.
- 2 Members appointed by the Lieutenant Governor.
- 2 Members appointed by the Speaker of the House of Representatives.
- 1 Member appointed jointly by the Chair of Senate State and Local Government Committee and House State and Local Government Committee.
- The Comptroller of the Treasury and the State Treasurer shall be ex-officio non-voting members of the board.
- The members of the board shall elect a chairperson, vice chairperson, a secretary, and a treasurer. No member of the board may hold two offices, except the same person may serve as secretary and treasurer.

Terms of Service

- Members of the board will serve initial terms as outlined below and thereafter will serve for term periods of 5 years:
 - 1 Member appointed by the Governor shall serve an initial period of 2 years.
 - 1 Member appointed by the Governor shall serve an initial period of 5 years.
 - 1 Member appointed by the Lieutenant Governor shall serve an initial period of 2 years.
 - 1 Member appointed by the Lieutenant Governor shall serve an initial period of 4 years.
 - 1 Member appointed by the Speaker of the House of Representatives shall serve an initial period of 2 years.
 - 1 Member appointed by the Speaker of the House of Representatives shall serve an initial period of 4 years.
 - 1 Member appointed jointly by the Chair of Senate State and Local Government Committee and House State and Local Government Committee shall serve an initial period of 5 years.

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- Authorizes members of the Board of Directors, upon approval by the board chairperson, to be reimbursed for actual and reasonable expenses incurred for each day's service spent in the performance of the duties of the corporation in accordance with comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general.

Lottery Retail Advisory Board

- The chairperson of the board of directors shall appoint a lottery retailer advisory board to be composed of 10 lottery retailers representing the broadest possible spectrum of geographical, racial, and business characteristics of lottery retailers.
- The function of the advisory board is to advise the lottery corporation board of directors on retail aspects of the lottery and to present the concerns of lottery retailers throughout the state.
 - Members of the lottery retailers' advisory board shall serve 2-year terms provided that 5 of the initial appointees shall serve initial terms of 1 year.
 - Members of the advisory board shall serve without compensation or reimbursement of expenses.

Chief Executive Officer of Tennessee Lottery Corporation

- The Board of Directors of the Tennessee Lottery Corporation shall appoint and provide for the compensation of the Chief Executive Officer of the Corporation.
- The CEO shall be an employee of the corporation and shall direct the day-to-day operations and management of the corporation.
- Requires the CEO to direct and supervise all administrative and technical activities in accordance with the provisions of this act and with the regulations, policies, and procedures adopted by the board of directors.

Powers and Duties of the Board of Directors

- Provides the Tennessee Lottery Corporation with all powers necessary in carrying out and effectuating the purposes and provisions of this act which are not in conflict with the constitution of this state and which are generally exercised by corporations engaged in entrepreneurial pursuits.
- The corporation is exempt from the requirements of the Uniform Administrative Procedure Act, compiled in Title 4, Chapter 5.
- Authorizes the board to adopt regulations, policies, and procedures regulating the conduct of lottery games.
- Requires the Chief Executive Officer to file a report quarterly with the state comptroller and the board of directors the full and complete statements of lottery revenue and expenses for the preceding quarter.
- Requires a background investigation to be conducted on each applicant who has reached the final selection process prior to employment by the corporation at the level of division director and above and at any level within any division of security and as otherwise required by the board.
 - Authorizes, but does not require, the following:
 - the corporation to pay for the actual cost of such investigation.
 - the corporation to contract with the Tennessee Bureau of Investigation to perform such background investigations.
- Requires the corporation to bond corporation employees with access to corporation funds or lottery revenue.

Lottery Proceeds

- Requires operating expenses to be paid from lottery proceeds to the corporation.
- Requires at least 45% of the amount of money from the actual sale of lottery tickets or shares to be made available as prize money.
- Requires "net proceeds" to equal at least 35% of the lottery proceeds. However, for the first 2 fiscal years and any partial first fiscal year of the corporation, "net proceeds" need only equal 30% of the proceeds.
- Requires, on or before the 15th day of each quarter, the corporation must transfer to the general fund of the state treasury, for credit to the lottery for education account for the preceding quarter, the amount of all "net proceeds" during the preceding quarter.
 - Requires the state treasurer to assign a director level member of the treasurer's staff to separately account for "net proceeds" by establishing and maintaining a lottery for education account within the state treasury.
 - Requires a scholarship shortfall reserve subaccount to be maintained within the lottery for education account. An amount equal to 10% of the total amount of lottery proceeds disbursed during the preceding fiscal year in the form of scholarships and grants for higher education shall be deposited from lottery proceeds each year until such amount equals 50%. Thereafter, only an amount necessary to maintain the reserve at 50% shall be deposited in the subaccount.
 - If the net proceeds paid into the lottery for education account in any year are not sufficient to meet the amount appropriated for higher education scholarships, the shortfall reserve subaccount may be drawn upon to meet the deficiency.
- Requires a shortfall reserve subaccount to be maintained within the lottery for education account. The amount of the account must be equal to 10% of the total amount of lottery proceeds deposited into the lottery education account for the preceding fiscal year.
 - If the net proceeds deposited into the lottery for education account in any year, exclusive of the amount in the shortfall reserve subaccount, are not sufficient to meet the amount appropriated for education purposes, the shortfall reserve subaccount may be drawn upon to meet the deficiency.

Budget Requirements and Appropriations for Lottery Proceeds

- Requires the Governor to estimate the amount of net proceeds and treasury earnings thereon to be credited to the lottery for education account during the fiscal year and the amount on unappropriated surplus estimated to be accrued in the account at the beginning of the fiscal year. The estimate must be reported to the general assembly, as a separate category entitled "lottery proceeds".
- Requires the Governor to make further specific recommendations as to the education programs and purposes for which appropriations should be made from the lottery education account.
- Requires all appropriations of lottery proceeds to any particular budget unit to be made together in a separate part entitled, identified, administered, and accounted for separately as a distinct budget unit for lottery proceeds.
- Appropriations for educational purposes and programs from the account not committed during the fiscal year shall revert to the general fund and be credited to the lottery for education account.

- Prohibits surplus funds in the lottery for education account to be reduced to correct any nonlottery deficiencies in sums available for general appropriations, and no surplus funds shall be included in any surplus calculated for setting aside nonlottery reserve or midyear adjustment reserve.

Participation by Minority Businesses

- Expresses the legislative intent of the general assembly that the Tennessee Lottery Corporation encourages participation by minority businesses.
- Requires the governor, the Speaker of the Senate, and the Speaker of the House of Representatives to jointly agree upon a minority consulting firm to assist the corporation in advising and adopting a plan to achieve a high level of participation, partnerships and joint ventures with minorities and minority businesses.
 - Such plan shall include training programs and other educational activities to enable such minorities and minority businesses to compete for contracts on an equal basis.
 - Compensation and fees for the minority consultant must be by a negotiated service contract between the consultant and the board and shall be for a duration of 1 year. The contract may be renewed on an annual basis until such time as the Governor, Speaker of the Senate, and Speaker of the House of Representatives agree that the services of a minority consultant are no longer necessary.

Vendor Requirements and Bidding Procedures

- Requires the corporation to investigate the financial responsibility, security, and integrity of any lottery system vendor who is a finalist in submitting a bid, proposal, or offer as part of a major procurement.
- Requires vendors to meet certain requirements prior to bidding.
- Requires each vendor, at the execution of the contract with the corporation, to post a performance bond or letter of credit from a bank or credit provider acceptable to the corporation in an amount deemed as necessary by the corporation for that particular bid or contract.
- Prohibits any contract to be let with any vendor in which a public officer or employee, as defined by 2-19-201, has an ownership interest of 10% or more.
- Requires all major procurement contracts to be competitively bid to policies and procedures approved by the board of directors unless there is only one qualified vendor and that vendor has an exclusive right to offer the service or product.
- Requires the corporation to provide compensation for lottery retailers in the form of commissions in an amount of not less than 5% of gross sales and may provide for other forms of compensation for services rendered in the sale or cashing of lottery tickets or shares.
- Requires the corporation to issue a certificate of authority to each person with whom it contracts as a retailer for purposes of display. Requires every lottery retailer to post and keep displayed in a location on the premises accessible to the public its certificate of authority.
- Requires all applicants for a certificate of authority to become a lottery retailer to be current in filing all applicable tax returns to the state and in payment of all taxes, interest, and penalties owed to the state, excluding items under formal appeal.
 - Authorizes and directs the Department of Revenue to provide such information to the corporation.

- Persons applying to become lottery retailers shall be charged a uniform application fee for each lottery outlet. Retailers who participate in on-line games shall be charged a uniform application fee for each on-line outlet.
- Prohibits any lottery retailer or applicant from giving, paying, or making any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding \$100 in any calendar year, to the CEO, any board member, or any employee of the corporation or to a member of the immediate family residing in the same household as any such person.

Sales, Receipts, Remittance, and Payouts of Lottery Proceeds

- All proceeds from the sale of lottery tickets or shares shall constitute a trust fund until paid to the corporation either directly or through the corporation's authorized collection representative.
- Requires the corporation to require lottery retailers to place all lottery proceeds due the corporation in accounts in institutions insured by the Federal Deposit Insurance Corporation, no later than the close of the next banking day after the date of their collection by the retailer until the date they are paid over to the corporation.
- Requires each lottery retailer to establish a separate bank account for lottery proceeds which must be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.
- Prohibits the sale of a ticket or share at a price other than established by the corporation unless authorized in writing by the chief executive officer.
- Prohibits the sale of lottery tickets by any person other than a duly certified lottery retailer.
- Prohibits the sale of lottery tickets or shares to persons under 18 years of age, but does not prohibit the purchase by a person 18 years of age or older for the purpose of making a gift to any person of any age.
- Prohibits a particular prize in any lottery game to be paid more than once. In the event of a determination of more than 1 claimant, the award will be divided equally among the total number of those claimants eligible.
- Requires a holder of a winning ticket to claim a cash prize within 180 days after the drawing in which the cash prize was won. If a valid claim is not made for a cash prize within the applicable period, the cash prize shall be considered as unclaimed.
 - A portion of unclaimed prize money, not to exceed \$200,000 annually, shall be directed to the Department of Human Services for the treatment of compulsive gambling disorder and educational programs related to such disorder.
 - Authorizes, but does not require, unclaimed prize money to be added to the pool from which future prizes are awarded or used for special prize promotions.

Violations and Penalties of Prohibited Actions

- Creates an offense for any person to falsely make, alter, forge, utter, pass, or counterfeit a state lottery ticket with the intent to defraud. Penalty if convicted for this violation is a Class E felony, provided the maximum fine for this offense is \$5,000.
- Creates an offense for any person to knowingly influence or attempt to influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials. Penalty if convicted for this violation is a Class E felony, provided the maximum fine for this offense is \$50,000.

- Creates an offense for any person knowingly making a material false statement in any application for a license or proposal to conduct lottery activities or make a material false entry in any book or record which is compiled or maintained or submitted to the board pursuant to the provisions of this chapter, Penalty if convicted for this violation is a Class E felony, provided that the maximum allowable fine is \$25,000 or the dollar amount of the false entry or statement, whichever is greater.

Reporting Requirements

- Requires the submission of quarterly and annual reports to the Governor, Comptroller, and the Lottery Oversight Commission established in the bill. The report must disclose the total lottery revenues, prize disbursements, operating expenses, and administrative expenses of the corporation during the reporting period. The annual report shall include all of the items listed and in addition describe the organizational structure of the corporation and summarize the functions performed by each organization division within the corporation.
- The corporation must also contract with a certified public accountant or firm for an annual financial audit of the corporation. The CPA or firm shall have no financial interest in any vendor with whom the corporation is under contract and must present an audit report no later than 7 months after the end of the fiscal year. The cost of the annual audit shall be an operating expense of the corporation. A copy of the audit must be sent to the Governor, the Speaker of the Senate, the Speaker of the House of Representatives, and the oversight committee chairperson.
- Requires the corporation to submit to the office of planning and budget, the legislative budget office, and the state comptroller by June 30th of each year a copy of the annual operating budget of the corporation for the next fiscal year. Requires the annual operating budget to be approved by the board of directors and be on such forms as prescribed by the office of budget and planning.
 - For informational purposes only, submit to the office of planning and budget on September 1 of each year a proposed operating budget for the corporation for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the net proceeds to be deposited into the lottery for education account for the succeeding fiscal year.
- Requires the corporation to adopt the same fiscal year as that used by state government.

Lottery Corporation Oversight Committee

- Creates a joint committee of the general assembly to be known as the lottery corporation oversight committee.

Composition

The committee will be composed of:

Chairperson of the Senate State and Local Government Committee

Chairperson of the House State and Local Government Committee

Members of the State Government Subcommittee of the House State and Local Government Committee

An equal number of Senators selected by the Chair of the Senate State and Local Government Committee.

- Requires the corporation to provide to the oversight committee no later than December 1 of each year a complete report of the level of participation of minority businesses in all retail and major procurement contracts awarded by the corporation.

Claimant Agencies Procedure for Collecting Delinquent Revenue from Lottery Winners

- Establishes a policy whereby claimant agencies of the state in conjunction with the corporation shall cooperate in identifying debtors who owe money to the state through its various claimant agencies or to persons on whose behalf the state and its claimant agencies act and who qualify for lottery prizes.
- Requires any claimant agency to submit to the corporation a list of the names of all persons who owe debts in excess of \$100 to such claimant agency or to persons on whose behalf the claimant agency is acting.
- Authorizes and requires the lottery corporation to withhold any winnings subject to the lien created by the provisions of the bill and send notice to the winner by certified mail, return receipt requested, of such action and the reason the winnings are withheld. If the winner appears and claims winnings in person, the corporation shall notify the winner at that time by hand delivery of such action.
 - If the debtor does not protest the withholding of such funds in writing within 30 days of such notice, the corporation shall pay the funds over to the claimant agency.
 - If the debtor protests the withholding of such funds within 30 days of such notice, the corporation shall file an action in interpleader in the circuit court of the county in which the debtor resides, pay the disputed sum to the clerk of the court, and give notice to the claimant agency and debtor of the initiation of such action.
- Liens created by the provisions of the bill shall be collected and paid as follows:
 - Taxes dues the state;
 - Delinquent child support; and
 - All other judgments and liens in order of the date entered or perfected.
- The provisions regarding liens and withholding shall apply only to prizes of \$5,000 or more and shall not apply to retailers authorized by the board to pay prizes of up to \$5,000 after deducting the price of the ticket.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$1,600/Incarceration*

Other Fiscal Impact - Establishes the mechanism and procedures for operating a state lottery estimated to generate in excess of \$200,000,000 in state revenues with 45% earmarked for prizes and the remainder earmarked for education scholarships, education scholarship reserve accounts, education reserve accounts and administrative expenses.

Estimate assumes the following:

- Adoption of a lottery is estimated to generate a net increase in state revenues in excess of \$200,000,000. This estimate was made using per capita gross proceeds of surrounding states that have lotteries. Bill provides that 45% of lottery proceeds will go to prizes, 10% must be placed in the scholarship shortfall reserve account and 10% must be placed in the shortfall education reserve account until such account's balances reach 50% of the preceding years proceeds. The remainder will be utilized for scholarships and administrative expenditures.

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- An increase in state revenues that is estimated to be not significant based on lottery winners who are identified as being delinquent in paying state taxes or child support.
- Based on provisions of the bill, all costs of administration and operations will be paid from lottery proceeds received.
- one Class E felony conviction every 3 years from attempting to falsify lottery tickets.

**Section 9-4-210, TCA, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated for operating cost, in current dollars, shall be based upon the highest cost of the next 10 years, beginning with the year the additional sentence to be served impacts the correctional facilities population.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James A. Davenport". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

James A. Davenport, Executive Director